

---

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

---

Proposed Rule  
LSA Document #18-408

## DIGEST

Amends [646 IAC 5-1-3](#) concerning definition of "approved training". Amends [646 IAC 5-1-4](#) concerning definition of "employee". Amends [646 IAC 5-1-17](#) concerning definition of "sick pay". Amends [646 IAC 5-2-1](#) concerning content of quarterly wage and employment reports required by the department. Amends [646 IAC 5-2-2](#) concerning filing of reports. Amends [646 IAC 5-2-3](#) concerning requirement of nothing to report. Amends [646 IAC 5-2-4](#) concerning estimation of wages. Amends [646 IAC 5-2-5](#) concerning unemployment contribution rates. Amends [646 IAC 5-2-6](#) concerning merit rate process. Amends [646 IAC 5-2-7](#) concerning transfers of Indiana operations. Amends [646 IAC 5-2-8](#) regarding calculation and payment of contributions. Amends [646 IAC 5-2-9](#) regarding accelerated payment of contributions under Schedule "A". Amends [646 IAC 5-2-11](#) regarding termination or transfer of business. Amends [646 IAC 5-2-15](#) regarding department notices to employers. Adds [646 IAC 5-2-17](#) regarding payments to the department. Amends [646 IAC 5-3-8](#) regarding seasonal employment wage reporting. Amends [646 IAC 5-5-4](#) regarding minor child or spouse employed in family business. Amends [646 IAC 5-6-5](#) regarding payments to corporate officers, directors, and members of a board of directors. Amends [646 IAC 5-7-2](#) regarding separating and base period employer notices and protests. Amends [646 IAC 5-8-2](#) regarding leave of absence. Amends [646 IAC 5-8-3](#) regarding voluntary quit (general). Amends [646 IAC 5-8-4](#) regarding voluntary quit (good cause). Amends [646 IAC 5-8-6](#) regarding discharge (breach of duty). Amends [646 IAC 5-9-2](#) regarding reporting requirements. Amends [646 IAC 5-9-3](#) regarding effort to secure full-time work. Amends [646 IAC 5-9-4](#) regarding report of job search. Amends [646 IAC 5-10-1](#) regarding conduct of claims adjudicators. Amends [646 IAC 5-10-2](#) regarding request for hearing before administrative law judge; notice of hearing. Amends [646 IAC 5-10-6](#) regarding continuances and dismissals. Amends [646 IAC 5-10-7](#) regarding withdrawal of appeal. Amends [646 IAC 5-10-8](#) regarding decision of administrative law judge. Amends [646 IAC 5-10-9](#) regarding request for appeal to the review board. Amends [646 IAC 5-10-10](#) regarding conduct of members of the review board. Amends [646 IAC 5-10-13](#) regarding witnesses, subpoenas, and limitation. Amends [646 IAC 5-10-15](#) regarding translations. Amends [646 IAC 5-10-18](#) regarding representation before an administrative law judge or the review board. Amends [646 IAC 5-10-19](#) regarding service of notice and computation of time. Amends [646 IAC 5-10-20](#) regarding pleadings and forms. Amends [646 IAC 5-10-24](#) regarding telephone hearings. Amends [646 IAC 5-10-25](#) regarding proceedings before liability administrative law judge. Amends [646 IAC 5-11-5](#) regarding claims for benefits. Amends [646 IAC 5-12-3](#) regarding reciprocal coverage election approval. Amends [646 IAC 5-12-6](#) regarding effective period of elections. Repeals [646 IAC 5-10-22](#). Effective March 30, 2019.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[646 IAC 5-1-3](#); [646 IAC 5-1-4](#); [646 IAC 5-1-17](#); [646 IAC 5-2-1](#); [646 IAC 5-2-2](#); [646 IAC 5-2-3](#); [646 IAC 5-2-4](#); [646 IAC 5-2-5](#); [646 IAC 5-2-6](#); [646 IAC 5-2-7](#); [646 IAC 5-2-8](#); [646 IAC 5-2-9](#); [646 IAC 5-2-11](#); [646 IAC 5-2-15](#); [646 IAC 5-2-17](#); [646 IAC 5-3-8](#); [646 IAC 5-5-4](#); [646 IAC 5-6-5](#); [646 IAC 5-7-2](#); [646 IAC 5-8-2](#); [646 IAC 5-8-3](#); [646 IAC 5-8-4](#); [646 IAC 5-8-6](#); [646 IAC 5-9-2](#); [646 IAC 5-9-3](#); [646 IAC 5-9-4](#); [646 IAC 5-10-1](#); [646 IAC 5-10-2](#); [646 IAC 5-10-6](#); [646 IAC 5-10-7](#); [646 IAC 5-10-8](#); [646 IAC 5-10-9](#); [646 IAC 5-10-10](#); [646 IAC 5-10-13](#); [646 IAC 5-10-15](#); [646 IAC 5-10-18](#); [646 IAC 5-10-19](#); [646 IAC 5-10-20](#); [646 IAC 5-10-22](#); [646 IAC 5-10-24](#); [646 IAC 5-10-25](#); [646 IAC 5-11-5](#); [646 IAC 5-12-3](#); [646 IAC 5-12-6](#)

SECTION 1. [646 IAC 5-1-3](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-1-3](#) "Approved training" defined**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 3. (a) "Approved training" means training when the claimant is enrolled in:

- (1) Workforce Investment **Innovation and Opportunity Act (WIOA) (WIOA)** services; or
- (2) training approved by the department.

(b) Training may be approved regardless of whether it is funded by the department or by the claimant.

*(Department of Workforce Development; [646 IAC 5-1-3](#); filed Apr 26, 2011, 11:23 a.m.:*

*[20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 2. [646 IAC 5-1-4](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-1-4](#) "Employee" defined**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-8](#); [IC 22-4.1](#)

Sec. 4. "Employee" means any individual performing personal services ~~which~~ **that** constitute employment under ~~[IC 22-4-8-1](#)~~, [IC 22-4-8](#), for remuneration.

(Department of Workforce Development; [646 IAC 5-1-4](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 3. [646 IAC 5-1-17](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-1-17](#) "Sick pay" defined**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 17. (a) "Sick pay" means payment made to an employee during periods of temporary absence due to illness or injury, if the employer anticipates that the employee will return to service.

(b) "Sickness or accident disability payment" means payment made to or on behalf of an individual after the individual's employment relationship has been severed by disabling sickness or accident, and the employer anticipates that the employee will not return to the employment.

(Department of Workforce Development; [646 IAC 5-1-17](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 4. [646 IAC 5-2-1](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-2-1](#) Quarterly wage and employment reports and contributions**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 1. (a) Every employer subject to [IC 22-4](#) ~~shall file quarterly wage and contribution reports in the form and manner prescribed by the department. These reports are due on or before the last day of the month next following the quarter for which the reports are filed. Contributions are due and payable at the time these reports are filed, except for those employers that have elected to become liable for payments in lieu of contributions.~~ **report the following information to the department in the form and manner prescribed by the department:**

- (1) Federal employer identification number assigned to the employer by the Internal Revenue Service.**
- (2) Total gross wages paid to all employees.**
- (3) Total remuneration paid for covered employment.**
- (4) Total wages subject to contribution.**
- (5) Total number of employees on the payroll.**
- (6) For every employee, the following:**
  - (A) Full first name.**
  - (B) Full last name.**
  - (C) Social Security number or individual taxpayer identification number.**
  - (D) Gross wages paid.**
  - (E) Start date.**
  - (F) Zip code of the physical work site location.**
  - (G) Whether the employee is classified by the employer as full-time or part-time, or whether the employee is designated as a seasonal worker pursuant to a decision issued by the department.**
  - (H) Whether the employee worked for the employer during the week containing the twelfth day of the month for each month in the quarter.**
  - (I) Standard Occupational Classification code applicable to the employee as prescribed by the**

**United States Department of Labor Bureau of Labor Statistics.**

**This wage and employment report is due on or before the last day of the month next following the quarter for which the report is filed. Contributions are due and payable on or before the last day of the month next following the quarter for which the wage and employment report was filed, except for those employers that have elected to become liable for payments in lieu of contributions.**

~~(b) Reports must show the total remuneration paid for covered employment as well as wages subject to contribution. The amount of payroll subject to contribution for any year is termed "wages" and is limited as follows:~~

~~(1) "Wages", as used in this section, shall not include remuneration in excess of the taxable wage base established by law paid to an individual by a single employer in a calendar year with the following exceptions:~~

~~(A) In cases of an acquisition of the organization, trade, or business of an employer, or the acquisition of a distinct and segregable portion of the business, the remuneration paid to an individual by the predecessor will be combined with remuneration paid to the same individual by the successor in the same calendar year in which the acquisition occurs to determine the taxable wage base limitation.~~

~~(B) The remuneration paid by an employer to an employee in another state will be combined with the remuneration paid by the same employer to the same employee in the same calendar year in this state to determine the taxable wage base limitation.~~

~~(2) Each employer must file a wage report, concurrently with the filing of the quarterly contribution report. The wage report must show the total remuneration paid for covered employment to each employee in any calendar quarter. Total remuneration includes taxable wages as well as remuneration in excess of taxable wages paid to each individual in a calendar year.~~

~~(e)~~ **(b) The quarterly wage and employment** reports and contributions from an employer are required for the entire calendar year in which the employer first becomes subject to [IC 22-4](#). The due date of contributions and reports for the quarter or quarters preceding the quarter in which the employing unit qualifies as an employer is the date upon which the employing unit actually acquired the status of an employer within the meaning of [IC 22-4](#); however, interest and penalty shall not accrue on past quarters until thirty (30) days after such date.

~~(d)~~ **(c)** If the due date for a **quarterly wage and employment** report falls on a Sunday, or a federal holiday, then that due date ~~will~~ **shall** roll over to the next department business day. In all other situations, the due date is the final date indicated on the report for a timely submission.

~~(e) Contributions required under subsection (c) will not apply to those employers that have elected to become liable for payments in lieu of contributions. However, reports are required of all employers regardless of election.~~

*(Department of Workforce Development; [646 IAC 5-2-1](#); filed Apr 26, 2011, 11:23 a.m.:*

*[20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 5. [646 IAC 5-2-2](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-2-2](#) Filing of reports**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 2. (a) Each employer shall ascertain the Social Security number (**SSN**) or individual taxpayer identification number (**ITIN**) of each employee and include the employee's ~~Social Security number name and SSN~~ or ITIN in any report filed with the department **for which the department requires any employee's SSN or ITIN.**

(b) All reports shall be filed on the forms required by the department.

(c) Reports shall be filed electronically if required by the department.

**(d) Any report that is incomplete or contains inaccurate information may be rejected by the department and shall not be considered submitted until such completions and inaccuracies are corrected by the employer.** *(Department of Workforce Development; [646 IAC 5-2-2](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 6. [646 IAC 5-2-3](#) IS AMENDED TO READ AS FOLLOWS:

**646 IAC 5-2-3 Quarterly wage and employment reports; nothing to report; errors**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 3. (a) If an employer has incurred no payroll, and no contributions are due for a particular quarter, the employer's **quarterly wage and employment** report may be marked "Nothing to Report" **in the form and manner required by the department** in lieu of completing the report with zeros. Quarterly ~~contribution wage and employment~~ reports must be sent to the department on a quarterly basis until the ~~employer department~~ terminates or inactivates its **the employer's** account.

~~(b) No contribution report submitted to the department will be returned to the employer for correction. If an error has been made in filing a contribution report, the employer shall submit an explanation for the error on the form required by the department.~~

~~(e)~~ **(b)** If an employer owes additional contributions as a result of a correction, the employer must remit all additional contributions due.

~~(d)~~ **(c)** If the employer has paid more contributions than owed, according to the corrected **quarterly wage and employment** report, the employer's account will show a credit balance. If the credit balance is greater than the amount due on the subsequent quarterly **wage and employment** report, the employer may file a claim for refund in the form and manner prescribed by the department.

~~(e)~~ **(d)** A claim for refund must be executed by the person to whom the claim is alleged to be due. A claim for refund by a corporation must be made in the name of the corporation, and executed by an officer thereof. A fiduciary will be required to furnish a certified copy of appointment to accompany a claim for refund on contributions not paid in fiduciary capacity.

*(Department of Workforce Development; [646 IAC 5-2-3](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 7. [646 IAC 5-2-4](#) IS AMENDED TO READ AS FOLLOWS:

**646 IAC 5-2-4 Estimation of wages**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-11-4](#); [IC 22-4.1](#)

Sec. 4. (a) Pursuant to the department's authority set forth in [IC 22-4-11-4](#), if an employer fails to timely submit quarterly **wage and employment** reports, the department ~~will investigate and, if necessary, shall determine whether to~~ estimate employer wages, and resulting contributions. The following circumstances relate to a ~~wage contribution~~ estimation by the department:

- (1) An employer's ~~contacting~~ **contact with** other state agencies regarding unemployment issues does not constitute the submission of **quarterly wage and employment** reports required by the department.
- (2) An employer's failure to claim certified mail notices sent by the department does not constitute a lack of notice to the employer.

(b) Once an ~~auditor~~ **the department** has determined that there is sufficient reason to begin the estimation process, the department ~~will~~ **shall** send the employer a penalty letter. ~~by certified mail, return receipt requested. The penalty letter will:~~ **shall:**

- (1) state the quarter ~~or quarters~~ and year ~~or years~~ of the missing **quarterly wage and employment** report; ~~or reports;~~ and
- (2) inform the employer that it has ~~fifteen (15)~~ **ten (10)** days to produce the **quarterly wage and employment** reports or the department will estimate the data.

If the employer does not submit the **quarterly wage and employment** reports in question, the department ~~will~~ **shall** estimate the employer wages and compute the resulting contributions, ~~penalty,~~ **penalties**, and interest for the covered quarters. **A penalty of twenty-five dollars (\$25) for failure to file any required quarterly wage and employment report within ten (10) days of the department's written request shall be applied.**

(c) After the department has done a **wage contribution** estimation and liability ~~computation~~ **assessment**, the department ~~will~~ **shall** send the employer a ~~notice and demand~~ **an original assessment** for payment. ~~by certified mail, return receipt requested.~~ The ~~notice and demand~~ **original assessment** sets forth the quarter or quarters and year or years in question, and the contributions, **surcharge**, penalties, and interest due to the department. The penalties include:

- (1) ~~a twenty-five dollar (\$25) fine for failure to file the wage report within ten (10) days of the agency's written request; and~~
- (2) ~~a twenty-five dollar (\$25) fine for the failure to file the contribution report within ten (10) days of the agency's written request.~~

The employer has fifteen (15) days from the mailing date of the ~~notice of demand~~ **original assessment was sent by the department** within which to file a timely protest.

(d) ~~With regard to employer protests, the following:~~

- (1) ~~If the employer files the actual reports in a timely manner, the department will adjust the employer's account to reflect the information provided. However, the twenty-five dollar (\$25) penalties for failure to timely file the reports will not be removed.~~
- (2) ~~If the employer files the actual reports after the expiration of the time for a timely protest, the estimation can be adjusted upward based upon the actual information submitted by the employer; however, it will not be adjusted downward unless the employer meets the following two (2) statutory conditions:~~
  - (A) ~~The employer produces true and actual reports.~~
  - (B) ~~The employer establishes reasonable cause for its failure to timely file the required reports.~~

(Department of Workforce Development; [646 IAC 5-2-4](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 8. [646 IAC 5-2-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[646 IAC 5-2-5](#) Unemployment contribution rates**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-11-2](#); [IC 22-4.1](#)

Sec. 5. (a) An employer ~~will~~ **shall** be subject to the penalty rate, as established under [IC 22-4-11-2](#), if as follows:

- (1) The employer fails to file any required quarterly **wage and employment** report.
- (2) The employer fails to pay the contributions, ~~penalty~~ **surcharge**, **penalties**, and interest charges owed for past quarters, or owed by a predecessor account, within ten (10) days of the date specified on ~~Form 1174 the~~ merit rate delinquency notice, which is sent ~~certified mail~~ by the department. The merit rate delinquency notice is not a protestable notification.

(b) Employers that no longer hold new employer status, and are not subject to the penalty rate, qualify for an experience-based merit rate. An employer's merit rate contribution is based upon the following:

- (1) The employer's experience account status as of the June 30 computation date.
- (2) The employer's payroll in the thirty-six (36) months immediately preceding the computation date.

(Department of Workforce Development; [646 IAC 5-2-5](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 9. [646 IAC 5-2-6](#) IS AMENDED TO READ AS FOLLOWS:

#### **[646 IAC 5-2-6](#) Merit rate process**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 6. (a) Merit rate calculations begin with the allocation of the pool account to employers. ~~in early July. Employers receive a~~ **are notified of the** mutualized benefit charge statement, ~~which is a nonprotestable, informational document.~~ **charges on the annual merit rate notice. Mutualized benefit charges are**



**nonprotestable.**

(b) ~~In mid-September~~ Any employer with outstanding liabilities, missing quarterly ~~contribution~~ **wage and employment** reports, or outstanding predecessor liabilities is sent a nonprotestable merit rate delinquency notice. ~~by certified mail, return receipt requested.~~ This notification provides the employer an opportunity to avoid being assigned a penalty rate for the next calendar year by making the payments due, or by submitting the missing reports, within ten (10) days of the ~~mailing date of the notice~~ **was sent by the department.**

(c) A merit rate notice is sent ~~by first class mail to the last known address of each employer~~ no later than March 30 of the rate year. This notice provides the employer with:

- (1) its experience balance;
- (2) its prior three (3) fiscal years of taxable payroll;
- (3) a voluntary payment offer if eligible; and
- (4) any requirements that have not been met.

An employer who has not met the listed requirements, or whose account is at the lowest available rate, is not eligible for a voluntary buy down. An employer has the right to protest its merit rate notice. The protest must be filed within fifteen (15) days of the ~~mailing date of the notice~~ **was sent by the department.** The protest right is limited to whether the employer's contribution rate was calculated correctly and does not extend to department determinations that were independently protestable when issued.

(Department of Workforce Development; [646 IAC 5-2-6](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 10. [646 IAC 5-2-7](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-2-7](#) Transfers of Indiana operations**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 7. (a) An employing unit, whether or not an employer at the time of transfer, that:

- (1) acquires all or a portion of an employer's trade or business (including the employer's workforce), which results in the continuance of an organization, trade, or business; or
- (2) merges, incorporates, or reorganizes the employing unit's business;

immediately qualifies as a covered employer under [IC 22-4](#) and assumes the position of the predecessor with respect to all the resources and liabilities of the predecessor's experience account. ~~In order for this section to be applicable, the transfer must result in a substantial change in ownership and management.~~ The successor/acquirer must complete State Form 2837 (Report to Determine Status) and **all reports via Employer Self Service or the current state form approved for such reporting.** The predecessor/dispenser must complete State Form 46799 (Report of Transfer—Complete Sale) ~~The deadline for filing is~~ **all reports via Employer Self Service or the current state form approved for such reporting. These reports must be filed by** the earlier of thirty (30) days from the dispositions date or ten (10) days from a request for information by the department.

(b) An employing unit, whether or not an employer at the time of transfer, that:

- (1) ~~purchases~~ **acquires** a distinct and segregable portion of an organization, trade, or business; and
- (2) retains **assets, which may include the workforce or** employees, **or both**, of that business;

~~will~~ **shall** be entitled to consider the wages reported by the predecessor/dispenser when computing the tax base per employee, per calendar year. The predecessor/dispenser must transfer a proportionate portion of its experience balance, and the merit rate, to the successor/acquirer. This must be done by the earlier of thirty (30) days from the date of disposition or not later than ten (10) days after notification from the department. The employers must complete State Form 23299 (Report of Transfer—Partial Sale). **all reports in the manner and form prescribed by the department.** Failure to complete this form ~~may the required forms shall~~ result in a the department mandated flat fifty percent (50%) transfer of the **making an independent determination with regard to the percentage of the transfer of the** dispenser's experience balance to the acquirer's experience balance.

(Department of Workforce Development; [646 IAC 5-2-7](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 11. [646 IAC 5-2-8](#) IS AMENDED TO READ AS FOLLOWS:

**646 IAC 5-2-8 Calculation and payment of contributions; municipal utilities**

**Authority:** IC 22-4-18-1; IC 22-4.1-3-3

**Affected:** IC 22-4-11-2; IC 22-4.1

Sec. 8. (a) If a city or town had previously been a covered employer to the extent of its municipal utilities, the utilities will pay contributions at their computed rate, but the rate will not exceed the prescribed rate under IC 22-4-11-2(e). IC 22-4-11-2(c).

(b) If, by statute, a municipal utility is set apart as a separate political subdivision, such utility will retain ~~their~~ **its** experience account and assigned rate, and IC 22-4-11-2(d) will apply to the new account assigned to the city or town for the purpose of reporting nonutility employment.

(Department of Workforce Development; 646 IAC 5-2-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

SECTION 12. 646 IAC 5-2-9 IS AMENDED TO READ AS FOLLOWS:

**646 IAC 5-2-9 Accelerated payment of contributions under Schedule "A"**

**Authority:** IC 22-4-18-1; IC 22-4.1-3-3

**Affected:** IC 22-4-10-1; IC 22-4-29-1; IC 22-4.1

Sec. 9. (a) The department may accelerate contribution payments under IC 22-4-10-1(a). When the department determines that contribution payments should be accelerated under the conditions set forth by statute, each subject employer will be notified ~~by regular mail~~ not fewer than thirty (30) days prior to the date the accelerated contribution is due.

(b) The employer:

- (1) will estimate the amount of the accelerated contribution payment based upon its projection of its estimated payroll for the accelerated quarter; and
- (2) must remit that amount in whole or in a percentage of the whole as determined by the department.

(c) Any amount of the estimated accelerated payment that exceeds the amount of contribution actually owed by the employer for the quarter to which the acceleration applies will be applied as a credit against that employer's future liability.

(d) If the amount of the estimated accelerated contribution remitted is less than the contribution actually owed by the employer for the accelerated quarter, the difference between the estimated contribution paid and the actual contribution owed must be paid at the time the contribution would normally be due for the accelerated quarter.

(e) All enforcement procedures that apply to regular contributions, including the interest and penalty provisions of IC 22-4-29-1, will apply to accelerated contributions.

(Department of Workforce Development; 646 IAC 5-2-9; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

SECTION 13. 646 IAC 5-2-11 IS AMENDED TO READ AS FOLLOWS:

**646 IAC 5-2-11 Termination or transfer of business; notice; final report; attachment of successor's assets**

**Authority:** IC 22-4-18-1; IC 22-4.1-3-3

**Affected:** IC 22-4; IC 22-4.1

Sec. 11. (a) Where the status of an employer is changed by cessation or disposition of a business or an appointment of a receiver, trustee, trustee in bankruptcy, or other fiduciary, the employer shall immediately notify the department **in the manner and on the form prescribed by the department**, and contributions with respect to wages for employment up to and including the date of the change of status, and with respect to amounts that

would otherwise constitute wages as defined in [IC 22-4](#), except for nonpayment thereof, are immediately due and payable. The employer shall immediately file necessary ~~contribution and~~ **quarterly wage and employment** reports, showing all remuneration paid per employee for employment occurring in the calendar quarter in which the change of status occurred, and all previous unreported contributions and remuneration. **Quarterly wage and employment** reports covering the calendar quarter in which the change of status occurred shall be marked "final report".

(b) Whenever an employer disposes of its organization, trade, or business, in whole or in part, it shall be the duty of both the employer and its successor to notify the department of the disposition on the forms prescribed by the department. If the disposing employer is a corporation, the employer shall follow the dissolution procedure described in [IC 22-4-32-23](#).

(Department of Workforce Development; [646 IAC 5-2-11](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 14. [646 IAC 5-2-15](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-2-15](#) Department notices to employers**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-19-13](#); [IC 22-4.1](#)

Sec. 15. (a) All notices to employers from the department shall be sent to one (1) of the following:

~~(1) The employer's facility at which the claimant last worked.~~

~~(2) (1) An address designated by the employer. The designation must be entered into the Employer Self Service (ESS) application by an employee of the employer with the authority to designate a correspondence agent. The following factors will be considered in determining where employer notices will be sent:~~

~~(A) When the job location is other than the employer's place of business, the employer's notice will be sent to the business address.~~

~~(B) If the employer elects to be represented by an agent or representative, and has properly entered the designation in the ESS application, as stated in this subdivision, the employer's notice will be sent to the address designated in the ESS application.~~

**(2) The employer's designated agent or representative, if the employer elects to be represented by an agent or representative, and has properly entered the designation in the ESS application.**

**(3) The employer's ESS account.**

**The department may make all notices available electronically.**

~~(b) All notices to employers originating in the central office of the department, including quarterly contribution reports, delinquent notices, and any other such notices concerning penalties, interest, or other information required to properly administer [IC 22-4](#), will be mailed to the:~~

~~(1) corporate office of the employer;~~

~~(2) official place of business; or~~

~~(3) the representative designated under subsection (a);~~

~~except notices that reflect legal action, which will be mailed without exception to the corporate office or the official place of business.~~

~~(c) All notices of:~~

~~(1) a new claim;~~

~~(2) a reopened claim;~~

~~(3) a claim of potential liability; or~~

~~(4) benefit charges;~~

~~will be mailed to only one (1) address to be designated by the employer. Employers that report wages under employer location numbers may elect to have the notices mailed to each separate establishment, the corporate office, or the designated representative.~~

**(d) Additionally, the department may make all notices available electronically. (b) Under [IC 22-4-19-13](#) the department may send the notices set forth in this section solely through electronic means if **unless** the employer elects to receive notices solely through electronic means: **the United States mail on the form and in the manner prescribed by the department.****



(c) Each employer shall provide to the department current, accurate contact information, including, but not limited to:

- (1) mailing address for service of registered mail; and
- (2) e-mail address.

(d) Each employer shall notify the department within fifteen (15) days of a change of mailing address or e-mail address.

(Department of Workforce Development; [646 IAC 5-2-15](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 15. [646 IAC 5-2-17](#) IS ADDED TO READ AS FOLLOWS:

**[646 IAC 5-2-17](#) Payments to the department**

Authority: [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

Affected: [IC 22-4](#); [IC 22-4.1](#)

**Sec. 17. All payments made or due to the department must be made in the manner prescribed by the department. The department may require all payments to be made electronically.**

(Department of Workforce Development; [646 IAC 5-2-17](#))

SECTION 16. [646 IAC 5-3-8](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-3-8](#) Seasonal employment wage reporting**

Authority: [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

Affected: [IC 22-4](#); [IC 22-4.1](#)

~~Sec. 8. Seasonal employers are required to keep an accurate account of wages paid to seasonal workers within the seasonal period as determined by the department. The department will furnish seasonal employers the special wage reporting forms with coding for seasonal employees. Wages will continue to be reported on a quarterly basis.~~ **shall comply with all reporting requirements as set forth by the department.**

(Department of Workforce Development; [646 IAC 5-3-8](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 17. [646 IAC 5-5-4](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-5-4](#) Minor child or spouse employed in family business**

Authority: [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

Affected: [IC 22-4](#); [IC 22-4.1](#)

**Sec. 4. (a)** A minor child who performs services for a partnership or corporation controlled by the parents of such **minor** child is considered to be employed by the partnership or corporation, and not by the **minor** child's parent or parents, but such employment is excluded if the firm is a partnership and the parents of the **minor** child are the sole owners and members of the partnership.

**(b)** Services performed for an employing unit by a **minor** child or spouse of the owner do not constitute employment, but if the employing unit is a partnership, an exempt relationship must exist with each member before such services shall be deemed as excluded services.

(Department of Workforce Development; [646 IAC 5-5-4](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 18. [646 IAC 5-6-5](#) IS AMENDED TO READ AS FOLLOWS:

**646 IAC 5-6-5 Payments to corporate officers, directors, and members of a board of directors**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 5. (a) An officer of a corporation who receives remuneration for his or her services as a corporate officer from a corporation is in employment during the entire term of his or her office, and the remuneration shall be considered as wages.

(b) A member of the board of directors of a corporation is not considered in employment, and fees paid for attendance at meetings of the board of directors shall not be deemed wages.

(c) A member of a board of directors is in employment, however, if he or she performs services for remuneration for the corporation other than those required by attendance at, and participation in, the meetings of the board of directors.

~~(d) The remuneration considered wages in subsection (a) shall be deemed wages paid by a PEO, and the corporate officer of a client business entity shall be deemed the employee of the PEO, when the services performed as a corporate officer are subject to a written agreement between the PEO and the client business entity, as provided in [646 IAC 5-1-14](#).~~

*(Department of Workforce Development; [646 IAC 5-6-5](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 19. [646 IAC 5-7-2](#) IS AMENDED TO READ AS FOLLOWS:

**646 IAC 5-7-2 Separating and base period employer notices; protests**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 2. (a) Whenever an individual files an initial claim for unemployment benefits, the department shall issue ~~a notice~~ **notices** to the claimant's last employer prior to the filing of the claim, and to all of ~~their~~ **the claimant's** base period employers, informing these employers of the filing of the claim, and requesting the submission of information regarding the claimant's separation from employment. ~~This notice~~ **The notices** also ~~informs~~ **inform** the employers that their experience account is potentially chargeable for benefits paid to the claimant.

(b) If the claimant has been separated for any of the following reasons, the employer shall file a protest setting forth the separation circumstances, and the form of protest, from publicly available department policy, will be set forth on the employer notice:

- (1) Voluntarily left the employment without good cause in connection with the work.
- (2) Was discharged for just cause.
- (3) Was discharged for gross misconduct in connection with his or her work.
- (4) Left due to the claimant's physical condition.
- (5) Left to accept other employment.
- (6) Left to enter self-employment.

(c) An employer shall file a protest when the following circumstances exist with regard to a separated claimant; and the form of protest, from publicly available department policy, will be set forth on the employer notice:

- (1) The claimant is entitled to:
  - (A) vacation pay;
  - (B) payment in lieu of vacation;
  - (C) standby pay; or
  - (D) wages in lieu of notice.
- (2) The claimant is receiving, or will receive, retirement pay.
- (3) There are other circumstances, of which the employer is aware, that are potentially disqualifying for claimant benefits.

(d) An employer should not notify the department if the claimant was laid off, unless other issues, such as set forth in subsection (c), exist.

(e) **(d)** An employer protest under this section must be filed with the department, as set forth on the notice, within ten (10) days of the mailing date of the notice **was sent by the department.**

(Department of Workforce Development; [646 IAC 5-7-2](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 20. [646 IAC 5-8-2](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-8-2](#) Leave of absence**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-15-1](#); [IC 22-4.1](#)

Sec. 2. (a) Where an individual takes a voluntary leave of absence, with the consent of the employer, it shall not constitute voluntarily leaving work without good cause within the meaning of [IC 22-4-15-1](#). However, no benefit or waiting period weeks may be accumulated during that period, unless the individual terminates the leave of absence by notifying the employer and becomes available for work.

(b) A **voluntary** leave of absence ~~for a disability~~ granted to an individual by an employer pursuant to the employer's rule or pursuant to terms of a collective bargaining agreement shall be deemed terminated on the day ~~following the disability~~ when the individual again becomes mentally and physically able to work and available for work and establishes ~~their~~ **the individual's** ability to work and availability for work.

(Department of Workforce Development; [646 IAC 5-8-2](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 21. [646 IAC 5-8-3](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-8-3](#) Voluntary quit; general**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 3. A claimant will not be considered to have voluntarily left employment for good cause in connection with the work unless ~~the claimant can establish~~ **it is established** that a reasonable individual in the same or similar circumstances would also have left the employment.

(Department of Workforce Development; [646 IAC 5-8-3](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 22. [646 IAC 5-8-4](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-8-4](#) Voluntary quit; good cause**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 4. (a) A voluntary quit due to excessive discipline, or inappropriate comments or conduct by managers or coworkers, will not constitute good cause in connection with the work unless ~~the claimant can establish~~ **it is established** that an individual in the same or similar circumstances would reasonably believe that the:

- (1) conduct was severe and pervasive;
- (2) conduct:
  - (A) was motivated by the claimant's:
    - (i) race;
    - (ii) age;
    - (iii) sex;

- (iv) national origin; or
- (v) religious beliefs;
- or other status protected by law;
- (B) endangered the claimant's physical safety; or
- (C) endangered the claimant's mental health; and
- (3) claimant reported the conduct pursuant to the employer's procedures, if any, but no employer action was taken within a reasonable period of time.

(b) An individual who quits employment in anticipation of an imminent discharge does so with good cause if ~~the:~~ **it is established that the:**

- (1) ~~claimant establishes that the~~ discharge was imminent; and
- (2) ~~employer fails to establish that the~~ imminent discharge would **not** have been for just cause.

(c) If an employer gives an employee the opportunity to submit a resignation from employment, rather than be discharged, and the employee resigns, this is a quit in lieu of discharge, and the separation will be analyzed under the discharge for just cause criteria, as the employer is the moving party in the separation.

(Department of Workforce Development; [646 IAC 5-8-4](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 23. [646 IAC 5-8-6](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-8-6](#) Discharge; breach of duty**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 6. (a) In order to qualify as a breach of duty for unemployment insurance purposes, the duty must be:

- (1) reasonably connected to the work;
- (2) reasonably owed to the employer by the employee; and
- (3) of such a nature that a reasonable employee would recognize a violation of the duty, and would understand that such a violation of the duty would subject the individual to discharge.

(b) A breach of duty reasonably owed to an employer includes, but is not limited to, conduct which establishes that the claimant:

- (1) damaged the employer's trust and confidence in the claimant's ability to effectively perform the job;
- (2) willfully failed to meet the employer's reasonable expectation;
- (3) chose a course of action that the claimant knew, or should have known, would negatively impact the employer's financial interests;
- (4) demonstrated an intentional or substantial disregard for the employer's interests;
- (5) intentionally or knowingly injured, or attempted to injure, the employer's financial interests;
- (6) intentionally chose a course of action that pitted the claimant's interests against the employer's interests to the detriment of the employer; or
- (7) showed carelessness or negligence to such a degree, or with such recurrence, as to cause damage to the employer's interests; or
- (8) performed some volitional act or exercised some control over the circumstances resulting in discharge from employment.**

(Department of Workforce Development; [646 IAC 5-8-6](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 24. [646 IAC 5-9-2](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-9-2](#) Reporting requirements**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 2. (a) A claimant is not eligible for benefits in any week unless ~~they:~~ **the claimant:**

- (1) ~~have~~ **has** filed a claim for benefits; and
- (2) ~~report~~ **reports** to the department each week that ~~they continue~~ **the claimant continues** to meet all eligibility requirements; and
- (3) **has responded completely to all inquiries from the department.**

(b) A claimant's claim for benefits, and weekly ~~report~~ **reports** to the department, **and responses to all department inquiries** must be filed in the form and manner prescribed by the department.

(c) If a claimant does not timely file a claim for benefits, or weekly report, the department ~~will~~ **shall** deny benefits for that week and ~~will~~ **shall** refuse to accept late-filed claims and reports unless the:

- (1) **department finds that the claimant has failed to file a was unable to file a claim, or** weekly report, ~~because the claimant's eligibility for benefits has been appealed; that week due to administrative error on the part of the department; or~~
- (2) department finds that the claimant ~~was unable to file a claim, or weekly report, that week due to administrative error on the part of the department.~~ **personally experienced a verified medical emergency that made it impossible for the claimant to file a timely claim or weekly report.**

~~(d) The department's refusal to accept untimely filings is not appealable.~~

(Department of Workforce Development; [646 IAC 5-9-2](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 25. [646 IAC 5-9-3](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-9-3](#) Effort to secure full-time work**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 3. To establish an effort to secure full-time work, a claimant is required to ~~search for complete~~ three (3) ~~positions~~ **work search activities** in each week for which benefits are claimed.

(Department of Workforce Development; [646 IAC 5-9-3](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 26. [646 IAC 5-9-4](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-9-4](#) Report of job search**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 4. A claimant must report on ~~their job~~ **the claimant's work** search on a weekly basis via submission of the online claim form, or in any other manner as required by the department.

(Department of Workforce Development; [646 IAC 5-9-4](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 27. [646 IAC 5-10-1](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-1](#) Conduct of claims adjudicators**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 1. Claims adjudicators are to observe standards of conduct consistent with their position. These standards include, but are not limited to, the following:

- (1) Upholding the integrity of the ~~agency~~ **department.**
- (2) Complying with statutory confidentiality provisions.



- (3) Avoiding impropriety or the appearance of impropriety in all activities.
- (4) Performing the duties of their position diligently and impartially.

(Department of Workforce Development; [646 IAC 5-10-1](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 28. [646 IAC 5-10-2](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-2](#) Request for hearing before administrative law judge; notice of hearing**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 2. (a) Any interested party in the claim of an employee shall be entitled to a hearing before an administrative law judge relative to the merits of the claim.

(b) "Interested party" means the following:

- (1) The claimant who filed the claim for benefits.
- (2) Any employer whose account may be affected by the adjudication of the claim.
- (3) Any employer in the claimant's base period.
- (4) Any employer:
  - (A) who has made an offer of work to the claimant; or
  - (B) to whose employment the claimant has been furnished a referral.
- (5) The claimant's last, separating employer prior to the filing of the claim.

(c) A party appealing a determination issued by the department shall file its appeal in the manner prescribed by the department. The appealing party shall include with its appeal a copy of the determination being appealed.

(d) Upon scheduling a hearing on an appeal, a notice of hearing shall be ~~mailed~~ **sent** to the following:

- (1) The claimant at ~~their~~ **the claimant's** last known address of record listed with the department **or the claimant self service system uplink account.**
- (2) ~~The claimant's last or separating~~ **Any employer described in subsection (b) involved in the appealed issue.**
- (3) ~~Any employer involved in the appealed issue.~~
- (4) **(3)** The department, if it is a party to the appealed issue.

(Department of Workforce Development; [646 IAC 5-10-2](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 29. [646 IAC 5-10-6](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-6](#) Continuances; dismissals**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 6. (a) An administrative law judge or the review board may continue any hearing upon its own motion, or upon request by any party to the appeal. The request must be received not later than three (3) days before the date of the hearing, unless the requesting party can demonstrate an unforeseen emergency. The request must set forth good cause for the granting of the request. A copy of the request must be served upon all parties to the hearing. A request for a continuance of a hearing pending before an administrative law judge shall be filed with that administrative law judge. A request for a continuance of a hearing pending before the review board shall be filed with the chairperson of the review board.

(b) Requests for continuances for cases pending longer than sixty (60) days from the filing date of the appeal will not be granted, unless the requesting party can demonstrate an unforeseen emergency.

(c) If the appealing party in a hearing pending before an administrative law judge **or the review board** fails to

appear for a scheduled hearing, after having received due notice, the administrative law judge **or the review board** shall dismiss the appeal, and the underlying, appealed determination shall be deemed final, unless the appeal is reinstated pursuant to the provisions of this rule.

(d) An administrative law judge, or the review board, may, in their discretion, dismiss any appeal that in ~~its~~ **their** judgment has been abandoned by all interested parties, and the underlying, appealed determination of eligibility, or administrative law judge decision, shall be deemed final, unless the appeal is reinstated pursuant to the provisions of this rule.

~~(e) If an appeal pending before an administrative law judge has been dismissed as the result of the appealing party failing to appear for a scheduled hearing, the appealing party may file a request for a reinstatement of their appeal. This request must be filed with the director of unemployment insurance appeals, or the director's designee, within seven (7) days from the mailing date of the dismissal. The request must show good cause for the appealing party's failure to appear for the hearing and will be granted or denied at the discretion of the director of unemployment insurance appeals, or the director's designee. If the reinstatement is granted, the hearing shall be rescheduled. If the request is denied, the appealing party may appeal the denial to the review board. No appeal shall be reinstated more than once after a dismissal.~~

*(Department of Workforce Development; [646 IAC 5-10-6](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 30. [646 IAC 5-10-7](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-7](#) Withdrawal of appeal**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 7. (a) A party appealing an initial determination of a deputy, or a party appealing a decision of an administrative law judge, may withdraw the appeal by written request. For an appeal pending before an administrative law judge, the request shall be filed with the presiding administrative law judge. For an appeal pending before the review board, the request shall be filed with the chairperson of the review board. If the request is approved, the underlying determination, or decision, shall become final.

(b) After an appeal has been withdrawn, the appealing party may file a request for reinstatement of the appeal within seven (7) days after the mailing date of the notice of withdrawal **was sent**. For an appeal before an administrative law judge, the request shall be filed with the director of unemployment insurance appeals, or the director's designee. For an appeal pending before the review board, the request shall be filed with the chairperson of the review board, **or the chairperson's designee**. The request for reinstatement must show good cause for the reinstatement, and will be granted or denied at the discretion of the director of unemployment insurance appeals, or the director's designee, or the chairperson of the review board, **or the chairperson's designee**, depending upon the level of the appeal. No appeal shall be reinstated more than once after a withdrawal.

*(Department of Workforce Development; [646 IAC 5-10-7](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 31. [646 IAC 5-10-8](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-8](#) Decision of administrative law judge**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 8. The decision of an administrative law judge shall contain conclusions of law that are supported by specific findings of fact. The decision shall be:

- (1) in writing;
- (2) electronically signed by the administrative law judge; and
- (3) **mailed sent** to:
  - (A) the named parties; and

(B) their designated representatives or attorneys.

(Department of Workforce Development; [646 IAC 5-10-8](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 32. [646 IAC 5-10-9](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-9](#) Request for appeal to the review board**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 9. Within fifteen (15) days after the mailing date of an administrative law judge **judge's** decision **was sent**, the adversely affected party may appeal the decision to the review board. The appeal shall be filed pursuant to the instructions set forth on the face of the administrative law judge decision. The review board may, in its discretion:

- (1) hold a hearing on the matter appealed; or
- (2) review the record from the administrative law judge hearing and issue their decision based upon that review.

(Department of Workforce Development; [646 IAC 5-10-9](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 33. [646 IAC 5-10-10](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-10](#) Conduct of members of the review board**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 10. (a) Review board members are expected to observe standards of conduct consistent with their position. These standards include, but are not limited to, the following:

- (1) Upholding the integrity of the ~~agency~~ **department**.
- (2) Avoiding impropriety or the appearance of impropriety in all activities.
- (3) Performing the duties of the office diligently and impartially.

(b) The review board shall convene upon the call of the chairperson, for consultation, and for the disposition of matters pending before the review board. Two (2) members of the review board shall constitute a quorum for the:

- (1) transaction of any business; and
- (2) performance of any act required or authorized to be transacted or performed by the review board.

(c) The chairperson, when incapacitated and with the consent of the appointing authority, may designate an acting chairperson in the chairperson's absence.

(Department of Workforce Development; [646 IAC 5-10-10](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 34. [646 IAC 5-10-13](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-13](#) Witnesses; subpoenas; limitation**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-17-8](#); [IC 22-4.1](#)

Sec. 13. (a) Whenever the attendance of a witness, or the production of documents or other evidence, is desired by any party to a hearing, the party must request the issuance of a subpoena. The request must be ~~made~~ **submitted to the administrative law judge in writing or** by telephone directed to the clerk of the administrative law judge. **If the request is made by telephone**, the clerk will:

- (1) take the information from the requesting party; and
- (2) submit the request to the administrative law judge for consideration.

The request must be made in time for the subpoena to be issued, and served, prior to the time and date of the hearing. The request will be granted or denied at the discretion of the administrative law judge.

(b) A subpoena shall be issued only upon a showing of necessity by the party requesting the subpoena. The request for a subpoena must contain:

- (1) the name and address of the individual being subpoenaed; and
- (2) a description of the document, record, or object to be produced.

(c) A subpoena, or a denial of a request for a subpoena, shall be served on all interested parties ~~by mail~~, by the clerk of the administrative law judge. Subpoenas shall be enforced in the manner set forth in [IC 22-4-17-8](#).

(Department of Workforce Development; [646 IAC 5-10-13](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 35. [646 IAC 5-10-15](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-15](#) Translations**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 15. (a) No paper or document written in any foreign language shall be introduced into evidence unless it is accompanied by an accurate English translation, with satisfactory proof, as determined by the administrative law judge **or the review board**, that the translation is a correct translation of the original.

(b) Testimony in a language other than English, or by the hearing impaired, shall be translated by an interpreter provided by the department, at the department's expense. The interpreter is subject to the interpreter oath or affirmation, which shall be administered by the administrative law judge **or the review board**.

(Department of Workforce Development; [646 IAC 5-10-15](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 36. [646 IAC 5-10-18](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-18](#) Representation before an administrative law judge or the review board**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 18. (a) Any employer or employing unit interested in any benefit claim pending before an administrative law judge or the review board may appear:

- (1) in person, by an officer or other employee of the ~~company~~; **employer or employing unit as** designated by the ~~company~~; **employer or the employing unit**;
- (2) by an attorney, ~~at law~~, as defined in subsection (e);
- (3) by a ~~recognized public~~ **an accountant in good standing with the Indiana board of accountancy**; or
- (4) by a representative of an unemployment compensation service firm.

(b) A claimant for unemployment benefits may appear:

- (1) in person;
- (2) by an attorney, ~~at law~~, as defined in subsection (e);
- (3) by a ~~recognized public~~ **an accountant in good standing with the Indiana board of accountancy**; or
- (4) by an authorized agent of a bona fide labor organization to which the claimant belonged at the time ~~that the appealed issue~~ **pending claim** occurred.

(c) In addition, any interested party may be represented by an individual or member of a class of individuals authorized by rule of the Indiana supreme court to represent parties in judicial or quasi-judicial proceedings.

(d) An administrative law judge, or the review board, in their discretion, may refuse to allow any person to

represent a party in any proceeding before the administrative law judge, or the review board, if the administrative law judge, or the review board, finds that this person is or has been guilty of unethical conduct, or has intentionally or repeatedly failed to observe the provisions of [IC 22-4](#), the rules of the department, or other rules or regulations relating to unemployment insurance hearings.

(e) As used in this section, "attorney" ~~means any person duly admitted to, and in good standing in, the practice of law in their state of residence. Any attorney, agent, or accountant may be required to produce proof of his or her authority and qualifications before appearing in any hearing before an administrative law judge or the review board.~~ **refers to one (1) of the following:**

**(1) An attorney in good standing admitted to the practice of law in Indiana.**

**(2) An attorney in good standing admitted to the practice of law in another state who has been granted temporary admission to the state bar under Rule 3 of the Rules for Admission to the Bar and the Discipline of Attorneys adopted by the Indiana supreme court.**

(f) Fees charged to claimants for representation before an administrative law judge or the review board shall be in a sum subject to the approval of the review board. Except in unusual cases, this fee shall be for a sum not in excess of fifteen percent (15%) of the unpaid balance of the claimant's maximum benefit amount.

*(Department of Workforce Development; [646 IAC 5-10-18](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 37. [646 IAC 5-10-19](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-19](#) Service of notice; computation of time**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-17-14](#); [IC 22-4.1](#)

Sec. 19. (a) Notice of all hearings or proceedings before an administrative law judge, or the review board, unless otherwise directed by statute, shall be given by United States mail, with proof of mailing being prima facie evidence of service, or by facsimile or electronic means, ~~agreed upon by the party receiving the notice~~, addressed to the parties' addresses of record on file with the department.

(b) As used in this section, "notice" includes ~~mailings~~ **the sending** of notices, determinations, decisions, orders, motions, or the filing of any document with the appellate division or the review board.

(c) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

(d) A document mailed **or electronically transmitted** to a party is presumed to be received if the document was mailed **or electronically transmitted** to the complete, correct address of record unless:

(1) there is tangible evidence of nondelivery, such as the document being returned to the ~~agency~~ **department** by the United States Postal Service; or

(2) credible and persuasive evidence is submitted to the ~~agency~~ **department** to establish nondelivery, delayed delivery, or misdelivery of the document.

(e) The filing of a document with the appellate division, or the review board, is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered in person to **the appellate division or the review board by an interested party or by the party's authorized representative.**

~~(A) the appellate division;~~

~~(B) the review board; or~~

~~(C) a WorkOne office;~~

~~by an interested party or by their authorized representative.~~

(2) The date of the postmark on the envelope containing the document, if the document is mailed to **the appellate division or the review board through the United States Postal Service.**

~~(A) the appellate division;~~

~~(B) the review board; or~~



~~(C) a WorkOne office;~~  
~~through the United States Postal Service.~~

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to **the appellate division or the review board by a private carrier.**

~~(A) the appellate division;~~  
~~(B) the review board; or~~  
~~(C) a WorkOne office;~~

~~by a private carrier.~~

(4) The date of receipt by the department **appellate division or the review board**, if the document is submitted by facsimile or in another electronic form approved by the department.

(f) When computing any period of time prescribed or allowed by this article, by order of an administrative law judge or the review board, or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is:

- (1) a Saturday;
- (2) a Sunday;
- (3) a legal holiday as defined by state statute; or
- (4) a day that the department is closed during regular business hours.

If the last day of the response period falls on a day described in subdivisions (1) through (4), then the period runs until the end of the next regular business day of the department.

(g) Responses filed outside of a time period computed pursuant to this section will be considered to be untimely.

*(Department of Workforce Development; [646 IAC 5-10-19](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 38. [646 IAC 5-10-20](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-20](#) Pleadings; forms**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 20. Unless otherwise provided in this rule, all forms, pleadings, and papers in connection with appeals shall be filed with the presiding administrative law judge or the chairperson of the review board depending upon the level of appeal. All legal motions filed by attorneys or representatives shall be served on all interested parties **to the appeal**, with an included certificate of service.

*(Department of Workforce Development; [646 IAC 5-10-20](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 39. [646 IAC 5-10-24](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-24](#) Telephone hearings**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 24. (a) Except as otherwise provided in this section, all hearings scheduled before an administrative law judge, or the review board, shall be set as telephone hearings, in which all interested parties **to the appeal** shall participate by telephone.

(b) Once an administrative law judge hearing is scheduled by telephone, ~~an interested~~ **a party to the appeal** has the right to:

- (1) object to telephone participation; and
- (2) be allowed to participate in the hearing in person.

Such an objection must be filed with the administrative law judge assigned to the case not later than three (3)

days prior to the scheduled hearing date. A revised notice of hearing will then be sent to the parties, changing the type of hearing for the requesting party to an in-person hearing at the hearing site closest to where the employment services were performed. Whether the nonrequesting party will also be required to participate in person shall be at the discretion of the administrative law judge assigned to the case.

(c) An administrative law judge, or the review board, may, at their discretion, schedule and conduct an in-person hearing under this rule.

(d) When a hearing before an administrative law judge, or the review board, is scheduled by telephone, either with one (1) or both parties participating by telephone, the parties shall:

(1) exchange any exhibits to be introduced into the record at the hearing; and

(2) ~~mail~~ **provide** a copy of those exhibits **in the form and manner prescribed by the department** to the administrative law judge, or to the review board, no later than ~~four (4)~~ **three (3)** days prior to the scheduled hearing date.

**For exhibits mailed using certified mail or a private carrier**, a copy of the certified mail mailing label or a copy of the label from a private carrier shall serve as proof of mailing.

(e) If, at the time of the scheduled hearing, all participants have not received copies of any exhibits, if the presenting party can establish proof ~~of mailing that the party provided a copy of the exhibits in the form and manner prescribed by the department~~, the administrative law judge, or the review board, has the discretion of continuing the hearing in order to allow all participants to obtain copies of all exhibits, or of attempting to have any missing exhibits read into the record, while affording the opposing party the opportunity to object to the admission of the exhibits. If the presenting party cannot establish proof ~~of mailing that the party provided a copy of the exhibits in the form and manner prescribed by the department~~, then the hearing will proceed as scheduled, without the consideration of the missing exhibits.

(f) A party to a telephonic hearing before an administrative law judge, or the review board, shall submit one (1) contact telephone number for the hearing. If a party has a representative, or has witnesses, that party shall arrange for ~~their~~ **that party's** representative, or witnesses, to be at ~~their~~ **that party's** location, or shall arrange for the conferencing of the additional individuals into the hearing. Absent prior approval for calling additional numbers per party, an administrative law judge, or the review board, will call only one (1) contact telephone number per party.

*(Department of Workforce Development; [646 IAC 5-10-24](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 40. [646 IAC 5-10-25](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-10-25](#) Proceedings before the liability administrative law judge**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4-32-4](#); [IC 22-4.1](#)

Sec. 25. (a) Any protest filed by an employer under [IC 22-4-32-4](#) must contain the cause or grounds for the protest, and the particular fact or facts relied upon to support the protest. The protesting employer may file either on the form provided by the department for that purpose or on any other document that shows an intent to protest the department's determination. The employer:

(1) must sign the protest; and

(2) shall file the protest with the commissioner.

(b) After the protest is received by the commissioner, the commissioner, or the commissioner's designee, shall refer the protest to the liability administrative law judge, who will set the date, time, and place for the hearing. The hearing will be scheduled to be held no fewer than ten (10) days following the ~~mailing date of~~ the notice of hearing **was sent**.

(c) By permission of the liability administrative law judge, the employer may amend its protest at any time prior to the beginning of the hearing. The hearing will be confined to the issues raised by the employer's protest.

(d) Unless the employer's protest is filed within the statutory time period, the department's liability determination shall be considered to be correct and final.

(e) The liability administrative law judge shall have no jurisdiction to determine the benefit rights of any individual to whom benefits have been paid as the result of a final determination.

(Department of Workforce Development; [646 IAC 5-10-25](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 41. [646 IAC 5-11-5](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-11-5](#) Claims for benefits**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 5. (a) Claims for benefits or waiting period shall be filed:

(1) by interstate claimants on uniform interstate claim forms and in accordance with the uniform procedures developed pursuant to the interstate benefit payment plan; and

(2) in accordance with the type of week in use in the agent state.

Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed in accordance with agent state rules or regulations for intrastate claims in local employment offices, at an itinerant point, or by mail, **or by electronic transmission.**

(c) With respect to claims for weeks of unemployment in which an individual was not working for the individual's regular employer, the liable state shall, under circumstances that it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period, late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim series, and no continued claim for a past period shall be accepted.

(d) With respect to weeks of unemployment during which an individual is attached to the individual's regular employer, the liable state shall accept any claim that is filed within the time limit applicable to such claims under the law of the agent state.

(Department of Workforce Development; [646 IAC 5-11-5](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 42. [646 IAC 5-12-3](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-12-3](#) Reciprocal coverage election approval**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 3. The Indiana unemployment insurance board delegates to the commissioner of the department **has the** authority to approve or disapprove reciprocal coverage elections in accordance with this rule.

(Department of Workforce Development; [646 IAC 5-12-3](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))

SECTION 43. [646 IAC 5-12-6](#) IS AMENDED TO READ AS FOLLOWS:

**[646 IAC 5-12-6](#) Effective period of elections**

**Authority:** [IC 22-4-18-1](#); [IC 22-4.1-3-3](#)

**Affected:** [IC 22-4](#); [IC 22-4.1](#)

Sec. 6. (a) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(b) The application of an election to any individual under this rule shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one (1) participating jurisdiction. Such termination shall be effective at the close of the calendar quarter in which notice of the finding is ~~mailed~~ **sent** to all parties affected.

(c) Except as provided in subsection (b), each election approved shall remain in effect through the close of the calendar year in which it is submitted until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(d) Whenever an election under this rule ceases to apply to any individual under subsection (b) or (c), the electing unit shall notify the affected individual accordingly.

*(Department of Workforce Development; [646 IAC 5-12-6](#); filed Apr 26, 2011, 11:23 a.m.: [20110525-IR-646100464FRA](#); readopted filed Nov 27, 2017, 3:22 p.m.: [20171227-IR-646170447RFA](#))*

SECTION 44. [646 IAC 5-10-22](#) IS REPEALED

SECTION 45. SECTIONS 1 through 44 of this document take effect March 30, 2019.

[Notice of Public Hearing](#)

*Posted: 12/05/2018 by Legislative Services Agency*  
An [html](#) version of this document.